

percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91-172, title I, §§101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1969—Pub. L. 91-172, §101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91-172, §121(d)(2)(C), substituted “income” for “rents” after “this chapter shall apply to”.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(C) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

### § 1444. Withholding on Virgin Islands source income

For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.

(Added Pub. L. 97-455, §1(b), Jan. 12, 1983, 96 Stat. 2497; amended Pub. L. 100-647, title I, §1012(x), Nov. 10, 1988, 102 Stat. 3530.)

#### AMENDMENTS

1988—Pub. L. 100-647 struck out “(as modified by section 934A)” before “shall not exceed”.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to payments made after Jan. 12, 1983, see section 1(e)(2) of Pub. L. 97-455, set out as a note under section 934 of this title.

### § 1445. Withholding of tax on dispositions of United States real property interests

#### (a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 15 percent of the amount realized on the disposition.

#### (b) Exemptions

##### (1) In general

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

##### (2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

##### (3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

##### (4) Transferee receives qualifying statement

###### (A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

###### (B) Qualifying statement

For purposes of subparagraph (A), the term “qualifying statement” means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

##### (5) Residence where amount realized does not exceed \$300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed \$300,000.

**(6) Stock regularly traded on established securities market**

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

**(7) Special rules for paragraphs (2), (3), and (9)**

Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

**(8) Applicable wash sales transactions**

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).

**(9) Alternative procedure for furnishing non-foreign affidavit**

For purposes of paragraphs (2) and (7)—

**(A) In general**

Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

**(B) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

**(c) Limitations on amount required to be withheld**

**(1) Cannot exceed transferor's maximum tax liability**

**(A) In general**

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

**(B) Request**

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

**(C) Refund of excess amounts withheld**

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

**(2) Authority of Secretary to prescribe reduced amount**

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

**(3) Procedural rules**

**(A) Regulations**

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

**(B) Requests to be handled within 90 days**

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

**(4) Reduced rate of withholding for residence where amount realized does not exceed \$1,000,000**

In the case of a disposition—

(A) of property which is acquired by the transferee for use by the transferee as a residence,

(B) with respect to which the amount realized for such property does not exceed \$1,000,000, and

(C) to which subsection (b)(5) does not apply,

subsection (a) shall be applied by substituting "10 percent" for "15 percent".

**(d) Liability of transferor's agents, transferee's agents, or qualified substitutes**

**(1) Notice of false affidavit; foreign corporations**

If—

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

**(2) Failure to furnish notice**

**(A) In general**

If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

**(B) Liability limited to amount of compensation**

An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

**(3) Transferor's agent**

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

**(4) Transferee's agent**

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

**(5) Settlement officer not treated as transferor's agent**

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

**(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates**

**(1) Certain domestic partnerships, trusts, and estates**

In the case of any disposition of a United States real property interest as defined in sec-

tion 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the gain realized to the extent such gain—

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

**(2) Certain distributions by foreign corporations**

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount of gain recognized on such distribution under such subsection.

**(3) Distributions by certain domestic corporations to foreign shareholders**

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

**(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates**

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

**(5) Rules relating to dispositions of interest in partnerships, trusts, or estates**

To the extent provided in regulations, the transferee of a partnership interest or of a

beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized on the disposition.

**(6) Distributions by regulated investment companies and real estate investment trusts**

If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the amount so treated.

**(7) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

**(f) Definitions**

For purposes of this section—

**(1) Transferor**

The term “transferor” means the person disposing of the United States real property interest.

**(2) Transferee**

The term “transferee” means the person acquiring the United States real property interest.

**(3) Foreign person**

The term “foreign person” means any person other than—

(A) a United States person, and

(B) except as otherwise provided by the Secretary, an entity with respect to which section 897 does not apply by reason of subsection (1) thereof.

**(4) Transferor’s maximum tax liability**

The term “transferor’s maximum tax liability” means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor’s unsatisfied withholding liability with respect to such interest.

**(5) Transferor’s unsatisfied withholding liability**

The term “transferor’s unsatisfied withholding liability” means the withholding obligation imposed by this section on the transferor’s acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

**(6) Qualified substitute**

The term “qualified substitute” means, with respect to a disposition of a United States real property interest—

(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor’s agent, and

(B) the transferee’s agent.

(Added Pub. L. 98-369, div. A, title I, §129(a)(1), July 18, 1984, 98 Stat. 655; amended Pub. L. 99-514, title III, §311(b)(4), title XVIII, §1810(f)(2)–(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219, 2827, 2828; Pub. L. 100-647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384; Pub. L. 103-66, title XIII, §13221(c)(3), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104-188, title I, §1704(c)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 105-34, title III, §311(c)(1), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108-27, title III, §301(a)(2)(C), May 28, 2003, 117 Stat. 758; Pub. L. 109-222, title V, §§505(b), 506(b), May 17, 2006, 120 Stat. 356, 358; Pub. L. 110-289, div. C, title I, §3024(a)–(c), July 30, 2008, 122 Stat. 2895; Pub. L. 112-240, title I, §102(c)(1)(C), (3), Jan. 2, 2013, 126 Stat. 2319; Pub. L. 114-113, div. Q, title III, §§323(b), 324(a), (b), Dec. 18, 2015, 129 Stat. 3103; Pub. L. 115-97, title I, §13001(b)(3)(A)–(C), Dec. 22, 2017, 131 Stat. 2097.)

AMENDMENTS

2017—Subsec. (e)(1). Pub. L. 115-97, §13001(b)(3)(A), in introductory provisions, substituted “the highest rate of tax in effect for the taxable year under section 11(b)” for “35 percent” and “multiplied by the gain” for “of the gain”.

Subsec. (e)(2). Pub. L. 115-97, §13001(b)(3)(B), substituted “the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount” for “35 percent of the amount”.

Subsec. (e)(6). Pub. L. 115-97, §13001(b)(3)(C), substituted “the highest rate of tax in effect for the taxable year under section 11(b)” for “35 percent” and “multiplied by the amount” for “of the amount”.

2015—Subsec. (a). Pub. L. 114-113, §324(a), substituted “15 percent” for “10 percent”.

Subsec. (c)(4). Pub. L. 114-113, §324(b), added par. (4).

Subsec. (e)(3) to (5). Pub. L. 114-113, §324(a), substituted “15 percent” for “10 percent”.

Subsec. (f)(3). Pub. L. 114-113, §323(b), substituted “any person other than—” for “any person other than a United States person.” and added subpars. (A) and (B).

2013—Subsec. (e)(1). Pub. L. 112-240, §102(c)(1)(C), substituted “20 percent” for “15 percent” in introductory provisions.

Subsec. (e)(6). Pub. L. 112-240, §102(c)(3), substituted “20 percent” for “15 percent (20 percent in the case of taxable years beginning after December 31, 2010)”.

2008—Subsec. (b)(7). Pub. L. 110-289, §3024(c)(1), amended par. (7) generally. Prior to amendment, par. (7) related to special rules for paragraphs (2) and (3).

Subsec. (b)(9). Pub. L. 110-289, §3024(a), added par. (9).

Subsec. (d). Pub. L. 110-289, §3024(c)(2)(C), substituted “, transferee’s agents, or qualified substitutes” for “or transferee’s agents” in heading.

Subsec. (d)(1). Pub. L. 110-289, §3024(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to notice of false affidavit; foreign corporations.

Subsec. (d)(2). Pub. L. 110-289, §3024(c)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) related to failure to furnish notice.

Subsec. (f)(6). Pub. L. 110-289, §3024(b), added par. (6).

2006—Subsec. (b)(8). Pub. L. 109-222, §506(b), added par. (8).

Subsec. (e)(6), (7). Pub. L. 109-222, §505(b), added par. (6) and redesignated former par. (6) as (7).

2003—Subsec. (e)(1). Pub. L. 108-27 substituted “15 percent” for “20 percent”.

1997—Subsec. (e)(1). Pub. L. 105-34 substituted “20 percent” for “28 percent” in introductory provisions.

1996—Subsec. (e)(3). Pub. L. 104-188 inserted at end “Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.”

1993—Subsec. (e)(1), (2). Pub. L. 103-66 substituted “35 percent” for “34 percent”.

1988—Subsec. (e)(1). Pub. L. 100-647 inserted “(or, to the extent provided in regulations, 28 percent)” after “to 34 percent”.

1986—Subsec. (b)(3). Pub. L. 99-514, §1810(f)(2), amended par. (3) generally, substituting “interests in corporation not United States real property interests” for “it is not a United States real property holding corporation” in heading, striking out the comma before “if the domestic corporation” in introductory provisions, inserting subpar. (A) designation and adding subpar. (B). Subsec. (d)(1)(A). Pub. L. 99-514, §1810(f)(3)(B), substituted “paragraph (2)” for “paragraph (2)(A)”.

Subsec. (d)(1)(B)(i). Pub. L. 99-514, §1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any transferor’s agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or”.

Subsec. (e)(1). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Pub. L. 99-514, §1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

“(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and  
“(B) either—

“(i) includible in the distributive share of a partner of the partnership who is a foreign person,  
“(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

“(iii) includible in the income of a foreign person under the provisions of section 671.”

Subsec. (e)(2). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Subsec. (e)(3). Pub. L. 99-514, §1810(f)(5), inserted “The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).”

Subsec. (e)(4). Pub. L. 99-514, §1810(f)(6), substituted “section 897” for “section 897(g)”.

Subsec. (e)(6). Pub. L. 99-514, §1810(f)(8), inserted “and regulations for the application of this subsection in the case of payments through 1 or more entities”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to distributions made after Dec. 31, 2017, see section 13001(c)(2) of Pub. L. 115-97, set out as a note under section 11 of this title.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 323(b) of Pub. L. 114-113 applicable to dispositions and distributions after Dec. 18, 2015, see section 323(c) of Pub. L. 114-113, set out as a note under section 897 of this title.

Pub. L. 114-113, div. Q, title III, §324(c), Dec. 18, 2015, 129 Stat. 3103, provided that: “The amendments made by this section [amending this section] shall apply to dispositions after the date which is 60 days after the date of the enactment of this Act [Dec. 18, 2015].”

#### EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 applicable to taxable years beginning after Dec. 31, 2012 and applicable to

amounts paid on or after Jan. 1, 2013, see section 102(d) of Pub. L. 112-240, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. C, title I, §3024(d), July 30, 2008, 122 Stat. 2896, provided that: “The amendments made by this section [amending this section] shall apply to dispositions of United States real property interests after the date of the enactment of this Act [July 30, 2008].”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 505(b) of Pub. L. 109-222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109-222, set out as a note under section 852 of this title.

Amendment by section 506(b) of Pub. L. 109-222 applicable to taxable years beginning after Dec. 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after May 17, 2006, see section 506(c) of Pub. L. 109-222, set out as a note under section 897 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable to amounts paid after May 28, 2003, see section 301(d)(2) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105-34, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1704(c)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384, provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99-514, as amended, set out as a note under section 593 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-514, title XVIII, §1810(f)(4)(B), Oct. 22, 1986, 100 Stat. 2827, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986].”

#### EFFECTIVE DATE

Pub. L. 98-369, div. A, title I, §129(c)(1), July 18, 1984, 98 Stat. 660, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

**§ 1446. Withholding of tax on foreign partners' share of effectively connected income**

**(a) General rule**

If—

(1) a partnership has effectively connected taxable income for any taxable year, and

(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

**(b) Amount of withholding tax**

**(1) In general**

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

**(2) Applicable percentage**

For purposes of paragraph (1), the term “applicable percentage” means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

**(c) Effectively connected taxable income**

For purposes of this section, the term “effectively connected taxable income” means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

(1) Paragraph (1) of section 703(a) shall not apply.

(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

**(d) Treatment of foreign partners**

**(1) Allowance of credit**

Each foreign partner of a partnership shall be allowed a credit under section 33 for such

partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

**(2) Credit treated as distributed to partner**

Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

(A) the day on which such tax was paid by the partnership, or

(B) the last day of the partnership's taxable year for which such tax was paid.

**(e) Foreign partner**

For purposes of this section, the term “foreign partner” means any partner who is not a United States person.

**(f) Special rules for withholding on dispositions of partnership interests**

**(1) In general**

Except as provided in this subsection, if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

**(2) Exception if nonforeign affidavit furnished**

**(A) In general**

No person shall be required to deduct and withhold any amount under paragraph (1) with respect to any disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

**(B) False affidavit**

Subparagraph (A) shall not apply to any disposition if—

(i) the transferee has actual knowledge that the affidavit is false, or the transferee receives a notice (as described in section 1445(d)) from a transferor's agent or transferee's agent that such affidavit or statement is false, or

(ii) the Secretary by regulations requires the transferee to furnish a copy of such affidavit or statement to the Secretary and the transferee fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

**(C) Rules for agents**

The rules of section 1445(d) shall apply to a transferor's agent or transferee's agent with respect to any affidavit described in subparagraph (A) in the same manner as such rules apply with respect to the disposition of a United States real property interest under such section.